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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1981

No. 81-6818

EDWARD D. CHRISTENSEN,

Appellant,

-v-

STATE OF UTAH,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF UTAH

MOTION OF APPELLEE, THE STATE OF UTAH, TO AFFIRM

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MOTION TO AFFIRM

Appellee, the State of Utah, pursuant to Rule 16 of the Supreme Court of the United States, moves that the final judgment and decree of the Supreme Court of the State of Utah be affirmed on the grounds that the questions presented are so unsubstantial as not to warrant further argument and portions of the decision are based on an adequate non-federal basis.

STATEMENT

This is a direct appeal from the order of the Utah Supreme Court denying the appellant's petition for a rehearing of its decision entered December 29, 1981.

On December 14, 1980, near Marysvale, County of Piute, State of Utah, appellant received a ticket for driving a vehicle, registered and licensed in Utah, upon the highways of Utah without a valid Utah Safety Inspection sticker as required by Utah Code Annotated, § 41-6-158 (1953), as amended.

The appellant was tried by a jury and convicted in the Piute County Justice Court on March 2, 1981, despite his challenge to the constitutionality of the statute. He was sentenced to six months in jail and a $100 fine. He appealed this conviction to the Sixth Judicial District Court in and for Piute County, State of Utah, where, in a trial de novo, on stipulated facts his challenge to the constitutionality of the statute was once again rejected. The district court affirmed the appellant's conviction but suspended the six-month jail sentence.

The appellant took an appeal from the decision of the district court to the Utah Supreme Court. The Utah Supreme Court affirmed the conviction on December 29, 1981, finding that the statute was constitutional and a valid exercise of the police power to insure safety on the highways of Utah. The appellant's petition for re-hearing was denied on March 2, 1982 and he filed a notice of appeal to this Court on March 23, 1982.

ARGUMENT

The decision of the Utah Supreme Court is plainly correct. The vehicle safety inspection statute which the appellant challenges as being unconstitutional, Utah Code Annotated, § 41-6-158 (1953), as amended (see Appendix A), is a proper exercise of the police powers of the State, as has been consistently recognized by decisions of this Court.

This Court found, in Minneapolis & St. Louis R. Co. v. Beckwith, 129 U.S. 26, 29 (1888), that the Equal Protection clause of the Fourteenth Amendment "does not limit, nor was it designed to limit, the subjects upon which the police power of the State may be exerted." Then as now, the nature and extent of legislation enacted pursuant to the police power depends upon the judgment of the legislature as to the security needed by society.

This Court has also recognized that the police power of the state extends to the regulation of movements of motor vehicles over highways since such movement is attended by constant and serious dangers to the public. Gibons v. Ogden, 9 Wheat. 1, 203 (1824); Hendrick v. Maryland, 235 U.S. 610, 614 (1915); Kane v. New Jersey, 242, U.S. 160 (1916). The only limitations that are imposed upon the exercise of the police power have occurred when the exercise of that power has substantially impaired interstate commerce. See, e.g. Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981). The classification used by the state legislature in requiring vehicle inspection stickers is reasonable and does not interfere with interstate commerce. In fact, as noted by the Utah Supreme Court, the classification (every motor vehicle registered in the state or bearing temporary permits on Utah plates) "applies to practically all users of the highways and all residents of the state" (See Appendix B). It is a reasonable exercise of the legislative power of Utah to provide a minimum level of safety for all vehicles which have the highest propensity of use on the highways of Utah; therefore, in light of the lack of any substantial issue, this appeal should be affirmed.

Furthermore, the appellant's second allegation of constitutional error focuses on the Justice Court Judge's action in excluding the jury from arguments on questions of law. Contrary to the appellant's claim, this presents no constitutional issue for review. The Utah Supreme Court correctly and summarily rejected this claim, recognizing that as a matter of procedural law questions of law are for the court and questions of fact are for the jury. Utah Code Annotated, § 77-17-10 (1981 Supp.) (See Appendix C).

Appellee respectfully submits, therefore, that the appellant presents no substantial question for the decision of this Court, and that the judgment and decree of the Utah Supreme Court should be affirmed.

Respectfully submitted this 8th day of June, 1982.

Earl F. Dorius

EARL F. DORIUS
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and exact copy of the foregoing Motion, postage prepaid, to Edward D. Christensen, Attorney Pro Se, 387 North 300 East, Richfield, Utah, 84701, this 8th day of June, 1982.

Susan Patton

APPENDIX A

41-6-158. Periodic inspection required — Display of inspection sticker required. (a) The department shall at least once each year require that every motor vehicle registered in this state or bearing temporary permits or Utah plates, except off-highway vehicles, be inspected and that an official certificate of inspection and approval be obtained for each such vehicle. Nothing in this subsection shall be construed to prevent any owner or lessee of a motor vehicle from voluntarily causing the official certificate of inspection number to coincide with the date of registration of such vehicle.

The inspection shall be made and certificate obtained with respect to the mechanism, brakes and equipment of every vehicle designated by the department under this subsection.

The department may establish necessary rules and regulations for the administration and enforcement of this section and may designate any period or periods of time during which an owner of any vehicle subject to this section shall display upon the vehicle a certificate of inspection and approval duly issued for the vehicle either upon the lower right-hand corner of the windshield thereof when required or upon the vehicle in such position as to be visible from the outside.

(b) The department may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to that of this state and may extend the time within which a certificate shall be obtained by the resident owner of a vehicle which was not in this state during the time an inspection was required.

(c) It shall be unlawful for any person to drive a motor vehicle registered in this state upon any street or highway without displaying the safety inspection sticker during the time designated by the department.

History: L. 1941, ch. 52, § 143; C. 1943, 57-7-28; L. 1967, ch. 78, § 12; 1967, ch. 96, § 1; 1973, ch. 122, § 1; 1978, ch. 14, § 1; 1979, ch. 262, § 61.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF UTAH

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State of Utah,
Plaintiff and Respondent,

v.

Edward D. Christensen,
Defendant and Appellant.

No. 17791

F I L E D
December 29, 1981

Geoffrey J. Butler, Clerk

PER CURIAM:

This case originated in a justice of the peace court where defendant was convicted by a jury of the traffic offense of failing to display an inspection sticker on his car.[1] On appeal to the district court, he was again convicted.

He attacked the constitutionality of the statute which authorizes the appeal to this Court under Article VIII, §9 of the Utah Constitution.

Defendant appeals without the assistance of legal counsel and presents a very articulate argument reflecting considerable perception of the basic concepts of our state and federal constitutions. In so doing, defendant urges that the statute is discriminatory, in that it has the practical effect of punishing Utah residents, while immunizing sister state transient motorists from like penalty.

Defendant relies upon the Fourth and Fourteenth Amendments of the federal Constitution. He also points to the landmark decision of Marbury v. Madison[2] which stands for ultimate superiority of the Constitution over offending statutes.

Defendant is fair and candid in conceding that the State, his opponent here, insists on using the police power as a shield against his attack. His citation of Richter v. East St. Louis and S. Ry. Co.,[3] to the effect that residents and non-residents enjoy constitutional equality does not destroy the superiority of police power concepts.

Statutes like that involved here, uniformly have been held constitutional, with rare interference by the Fourth and Fourteenth Amendment. A case that arose in Illinois briefly and aptly states as follows:

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1. In violation of U.C.A., 1953, 41-6-158.
2. 5 U.S. 13 (1803).
3. 20 F.2d 220 (Mo. Dist. Ct. 1927).

> Neither the Fourteenth Amendment to the Federal Constitution nor any provision of the Constitution of this state was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, safety, morals, or general welfare of the people. [Citations omitted.][4]

No one would venture to ignore a law to make safe and prevent what too often is wholesale slaughter on the highways, simply because a few transients, perhaps in interstate commerce, have no Utah safety stickers on their vehicles. The classification of affected persons is reasonable, and applies to practically all users of the highways and all residents of the state. It would be unreasonable to render the statute void and to deny citizens an irreplaceable insurance policy for their safety on constitutional grounds.[5]

The defendant has not shown in the record any proof that the purpose of the statute is other than for the welfare of the community, or an improper exercise of the police power.

The second contention urged by defendant to the effect it was error to discuss a question of law out of earshot of the jury is without merit since such questions are for the court as are questions of fact for the jury.

Affirmed.

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Stewart, Justice concurs in the result.

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4. City of Evanston v. Wazan, 364 Ill. 198, 4 N.E.2d 78 (1936).
5. State v. Twitchell, 8 Utah 2d 314, 333 P.2d 1075 (1959).

APPENDIX C

77-17-10. Court to determine law; the jury, the facts.—(1) In a jury trial, questions of law are to be determined by the court, questions of fact by the jury.

(2) The jury may find a general verdict which includes questions of law as well as fact but they are bound to follow the law as stated by the court.

History: C. 1953, 77-17-10, enacted by L. 1980, ch. 15, § 2.